

Exhibit A

Expert Report of Coneisha L. Sherrod

Raymond Hernandez and Venita Beth Hernandez
vs.

Rush Enterprises, Inc., Rush Truck Centers of Texas, L.P., Holt Texas, LTD, d/b/a Holt Cat,
Schlumberger Limited, and Schlumberger Technology Corporation

Prepared by Coneisha L. Sherrod

February 3, 2020

Purpose of Testimony

Attached is my resume. I have been retained by the Sanford firm in the case of Raymond Hernandez and Venita Beth Hernandez vs. Rush Enterprises, Inc., et al. The purpose of my testimony is to provide insight, explanation, and opinions about employment practices, policies and procedures implemented, enforced, and overseen by corporate boards, officers, human resource managers, and supervisors.

Statistics

According to the National Safety Council, in 2017, workplace assaults resulted in 18,400 injuries and 458 fatalities. This breaks down to a workplace assault every 29 minutes and a death every 19 hours. See attached.

According to a study by a private foundation, 50% of adults have experienced or witnessed bullying in their workplace. See attached.

Assumptions

I have reviewed the plaintiff's first amended complaint and jury demand and have been requested to assume that the facts in the amended complaint are true.

System Failure

Based upon my review of the facts as assumed, I have identified a system failure in the case. The system failure is that each of the corporations who had responsibilities for employees in and the safety of people in the workplace failed to supervise the enforcement of the laws to protect the safety of employees in the workplace.

Root Cause

The root cause of the system failure in this case was failure to monitor the workplace to enforce the law.

Prevention is the best tool to eliminate harassment in the workplace. (www.eeoc.gov).

Safety Rules

In consultation with counsel for Mr. and Mrs. Hernandez, I have identified three safety rules that, if followed, would have prevented damages to Mr. and Mrs. Hernandez and would protect employees in the workplace. These rules come from laws, regulations, government guidelines, accepted industry standards and common sense.

The first safety rule is: Corporations must not allow harassment in the workplace based on race to protect us from damages.

The second safety rule is: Corporations must not allow harassment in the workplace that could lead to injuries to protect us from damages.

The third safety rule is: Corporations must care about workplace laws and safety to protect us from damages.

We know that these rules are accurate because they are supported by the Civil Rights Act of 1866, 42 U.S.C. § 1981; Title VII of the Civil Rights Act of 1964, EEOC regulations and guidelines, state common law, accepted industry standards and practices, and common sense. Virtually every employer will have similar rules in their employee handbook.

Checklist for First Safety Rule

To determine whether a corporation is complying with the first rule, in addition to hiring qualified people and training them, corporations should:

1. Monitor the workplace;
2. Investigate complaints;
3. Keep records;
4. Analyze information; and
5. Reward compliance

Monitoring the Workplace

Corporations should monitor the workplace looking for warning signs. The EEOC states that employers should monitor the workplace for patterns of potential discrimination.

(www.eeoc.gov)

An employer has an affirmative duty to maintain a working environment free from harassment on the basis of national origin, 29 C.F.R. § 1606.8(a).

Ethnic slurs and other verbal or physical conduct related to an individual's national origin constitute harassment when this conduct, (1) has the purpose or effect of creating an intimidating, hostile or offensive working environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities. 29 C.F.R. § 1606.8(b).

With respect to conduct between fellow employees, an employer is responsible for acts of harassment in the workplace on the basis of national origin, where the employer, its agent or supervisory employees, knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action. 29 C.F.R. § 1606.8(d).

An employer may also be responsible for the acts of non-employees with respect to harassment of employees in the workplace on the basis of national origin, where the employers or its agents or supervisory employees knows or should have known of the conduct and fail to take immediate and appropriate corrective action. Consideration is given of the extent of the

employer's control and any other legal responsibility which the employer may have in respect to the conduct of such non-employees. 29 C.F.R. § 1606.8(e).

See also article: Managing Workplace Monitoring and Surveillance (SHRM).

Some examples of monitoring include:

- Installing cameras
- Unannounced inspections
- Using anonymous surveys
- Conducting exit interviews

Investigate Complaints

The EEOC states that a corporation should give clear assurance that employees who oppose discrimination will be protected against retaliation, and assurance that the employer will take immediate and appropriate action when determined that harassment has occurred. (www.eeoc.gov).

The EEOC states that all employers should have an anti-harassment policy and complaint procedure that includes a complaint process that provides a prompt, thorough, and impartial investigation; and assurance that the employer will take immediate and appropriate action when it is determined that harassment has occurred.

Because discrimination often is subtle, and there rarely is a "smoking gun," determining whether race played a role in the decision making requires examination of all of the surrounding facts and circumstances. The presence or absence of any one piece of evidence often will not be determinative. Sources of information can include witness statements, including consideration of their credibility; documents; direct observation; and statistical evidence such as EEO-1 data, among others. See EEOC Compl. Man., Vol. I, Sec. 26, "Selection and Analysis of Evidence." A non-exhaustive list of important areas of inquiry and analysis is set out below.

<https://www.eeoc.gov/policy/docs/race-color.html#VA1>

Matters to consider are:

- Race-related statements (oral or written) made by decisionmakers or persons influential to the decision
- Comparative treatment evidence
- Relevant background facts
- Relevant personnel policies
- The decisionmaker's race
- Statistical evidence

<https://www.eeoc.gov/policy/docs/race-color.html#VA1>

To conduct a fair investigation, an employer should:

1. Ensure confidentiality
2. Provide interim protection
3. Select the investigator
4. Create a plan for the investigation
5. Develop interview questions
6. Conduct interviews
7. Make a decision
8. Close the investigation
9. Develop written summary investigation results

<https://blog.shrm.org/workforce/hr-tools-and-tech-how-to-conduct-an-investigation>

When conducting an investigation, all important witnesses should be interviewed or re-interviewed for explanations if the witnesses are not consistent with each other.

Keep Records

Employers must keep records of information to make EEO-1 reports which identify racial or ethnic diversity. 29 C.F.R. § 1602.7. Employers must keep additional information related to personnel records to determine if discrimination or retaliation is happening in their workplace. 29 C.F.R. § 1602.11., § 1602.12., § 1602.14. § 1602.12.

A corporation should always keep records of complaints.

Analyze Information

The EEOC states that a corporation should conduct a self-analysis to determine whether current employment practices disadvantage people of color, treat them differently, or leave uncorrected the effects of historical discrimination in the company. (www.eeoc.gov).

The analysis should include a review of the information gathered to monitor the investigation to determine if discrimination or retaliation is occurring or likely to occur in the workplace or whether additional preventative measures can be taken.

Reward Compliance

Rewarding compliance is the flip side to immediate and corrective action. Corrective action addresses past violations. Rewarding compliance helps to prevent future violations.

Prevention is better than correction, or worse, a cover-up.

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwjBqtfWmLbnAhULH80KHe5DDjsQFjAAegQIARAB&url=https%3A%2F%2Fassets.hcca-info.org%2FPortals%2F0%2FPDFs%2FResources%2Flibrary%2F814_0_IncentivesCEProgram-Murphy.pdf&usg=AOvVaw01ftQAUn2uafE6tsa_ndfd

Checklist for Second Safety Rule

To determine whether a corporation is complying with the second rule, a corporation should consider whether:

1. The risk of an occurrence such as this is small;
2. The foreseeability is small and the likelihood of injury is remote;
3. The burden on the employer, while not heavy is significant;
4. The consequences can be extreme; and
5. The social utility is small.

Pagayon v. Exxon Mobile Corp., 536 S.W.3d 499, 507-08 (Tex. 2017).

Corporations should be able to foresee that discrimination and harassment occurs in the workplace and that no area of employment would be exempt from it. The corporation should see that the community would care about the safety of employees and protection against not only physical harm, but discrimination and retaliation because the consequences can be extreme. Protecting against harassment and discrimination is an important priority and national policy in America.

Checklist for Third Safety Rule

To determine whether a corporation is complying with the third rule, a corporation should ask themselves these questions:

1. Are they more worried about the threat of liability than complying with the law?
2. Do laws take a backseat to profits at the company?
3. Do they reward for a job done by any means whatsoever?
4. Do they have systems in place to prevent violations?
5. Do they have a lack of diversity among the persons in charge?
6. Are they afraid to upset the status quo to comply with the law?

Application of the Rules to this Case

Based on my understanding of the facts in the first amended complaint, Rush Trucking, Holt Cat, and Schlumberger have violated each of the rules resulting in damages to Mr. and Mrs. Hernandez.

Methodology

The methodology used to reach my explanations and opinions is valid.

1. The theories and techniques I used can be and have been tested.
2. They are supported by peer review and publications.

3. They do not have known or potential error rate or the potential error rate is low because they are supported by law, regulations, industry standards, and common sense.
4. They are supported by the existence and maintenance of standards controlling the operation of conduct in the workplace.
5. They have attracted widespread acceptance within a relevant scientific community.

Compensation

I have agreed to be compensated at \$150 an hour for my time for preparing the report and testifying in this case.



Coneisha Sherrod

Workplace Violence

Is Your Workplace Ready?



Every year, millions of American workers report having been victims of workplace violence. In 2017, [assaults resulted in 18,400 injuries and 458 fatalities](#), according to *Injury Facts®*.

Certain industries, including [healthcare](#), service providers and education, are more prone to violence than others. [Taxi drivers](#), for example, are more than 20 times more likely to be murdered on the job than other workers, according to OSHA.

But make no mistake: Workplace violence can happen anywhere.

The Numbers are Alarming

According to the [National Institute for Occupational Safety and Health](#), workplace violence falls into four categories: Criminal intent, customer/client, worker-on-worker and personal relationship, which overwhelmingly targets women.

No matter who initiates the confrontation, the deadliest situations involve an active shooter. [U.S. Department of Homeland Security](#) defines active shooter as someone "actively engaged in killing or attempting to kill people in a confined and populated area."

A lot can happen in the chaotic minutes before police arrive; [DHS advises](#) staying calm and exercising one of three options: Run, hide or fight.

- If there is an accessible escape route, leave your belongings and get out
- If evacuation is not possible, find a hiding place where you won't be trapped should the shooter find you, lock and blockade the door, and silence your phone
- As a last resort and only when your life is in imminent danger, attempt to incapacitate the shooter by throwing items, improvising weapons and yelling

Every Organization Needs to Address Workplace Violence

Managers and safety professionals at every workplace should develop a policy on violence that includes:

- Employee training and creating an emergency action plan
- Conducting mock training exercises with local law enforcement
- Adopting a zero-tolerance policy toward workplace violence

Know the Warning Signs

Some people commit violence because of revenge, robbery or ideology – with or without a component of mental illness. While there is no way to predict an attack, you can be aware of behaviors in coworkers that might signal future violence:

- Excessive use of alcohol or drugs
- Unexplained absenteeism, change in behavior or decline in job performance
- Depression, withdrawal or suicidal comments
- Resistance to changes at work or persistent complaining about unfair treatment
- Violation of company policies
- Emotional responses to criticism, mood swings
- Paranoia

Most every "place" is somebody's workplace. So whether you are a patron or an employee, it's important to be alert.



Bullying Statistics

Data and information about the basics of bullying behavior and how you can make a difference today.

If you are facing any kind of stress, harassment or feelings of hopelessness, don't wait another moment to reach out for help. Here are some great organizations that can help you now: [The National Suicide Prevention Lifeline](#) (1-800-273-8255), [The Trevor Project](#) (1-866-488-7386) and the [Jed Foundation](#)

Bullying: Fast Facts

20% of U.S. students in grades 6–12 have experienced bullying.¹

20% of U.S. students in grades 9–12 have experienced bullying.³

9% of students in grades 6–12 experienced cyberbullying.¹

15% of high school students (grades 9–12) were electronically bullied in the past year.⁴

55.2% of LGBT students experienced cyberbullying.⁵

30% of young people admit to bullying others in surveys.²

70.6% of young people say

Bullying: Myths vs Facts

Right-click and save the images to your desktop.



[Privacy - Terms](#)

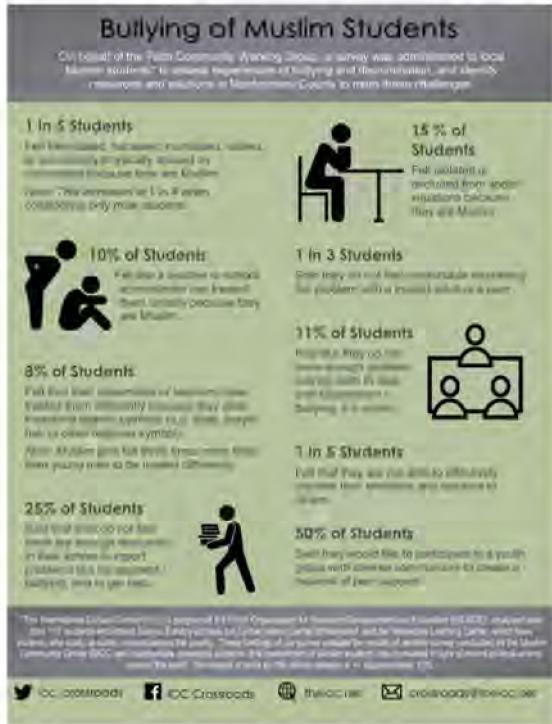
they have seen bullying in their schools.²

70.4% of school staff have seen bullying.

62% witnessed bullying two or more times in the last month and 41% witness bullying once a week or more.²

Statistics for how many Muslim-American students experience bullying
Click to see full image





When bystanders intervene, **bullying stops within 10 seconds 57% of the time.⁴**

STOP BULLYING ON #DAY1!

Bullying: The Basics

What is Bullying?

Bullying is defined as any unwanted and harmful verbal, physical, psychological, sexual or social act committed by an individual or group, as well as any real or perceived threat or imbalance of power.

According to the U.S. Department of Justice, bullying includes teasing, name-calling, intimidation, humiliation, taunting, spreading rumors or lies, demands for money, online harassment (known as cyberbullying), sexual harassment, physical assault, theft and destruction of property.

Those harmed by bullying may be targeted on the basis of their sex, gender, race, ethnicity, religion, sexual orientation, gender identity, physical appearance and/or disability.

Although bullying is widespread in schools and on campuses across the United States, it is oftentimes less visible than people imagine, and it is often underreported.

In order to be considered bullying, the behavior must be aggressive and include:

- **An Imbalance of Power:** Kids who bully use their power—such as physical strength, access to embarrassing information, or popularity—to control or harm others. Power imbalances can change over time and in different situations, even if they involve the same people.
- **Repetition:** Bullying behaviors happen more than once or have the potential to happen more than once.
Bullying includes actions such as making threats, spreading rumors, attacking someone physically or verbally, and excluding someone from a group on purpose.

Are there Types of Bullying?

There are three types of bullying⁶:

Verbal bullying is saying or writing mean things. Verbal bullying includes:

- Teasing
- Name-calling
- Inappropriate sexual comments
- Taunting
- Threatening to cause harm

Social bullying, sometimes referred to as relational bullying, involves hurting someone's reputation or relationships. Social bullying includes:

- Leaving someone out on purpose
- Telling other children not to be friends with someone
- Spreading rumors about someone
- Embarrassing someone in public

Physical bullying involves hurting a person's body or possessions. Physical bullying includes:

- Hitting/kicking/pinching
- Spitting
- Tripping/pushing
- Taking or breaking someone's things
- Making mean or rude hand gestures

Bullying By the Numbers

Right-click and save the infographic to your desktop.



Why Does Bullying Matter?

Bullying is a serious educational issue, and a matter of public health and safety. It creates a climate of fear and panic within schools, on playgrounds and throughout neighborhoods – and in today's digital age, bullying is carried out after school hours over the Internet.

Children, adolescents and adults harmed by bullying often suffer from a wide range of psychological and school-related problems, including anxiety, depression, low self-esteem, suicidal ideation, chronic lateness and absences, and difficulty concentrating.

What Are the Effects of Bullying?

Bullying can often have painful physical and emotional effects such as:

- Emotional Distress
- Substance Abuse
- Missing Work & School
- Suicide

How Can We Prevent Bullying?

School administrators, staff, educators, parents and community members can help prevent bullying by discussing it in classes, building a safe school environment and by creating a bullying prevention strategy in their community. The #Day1 Campaign is an effective, immediate and free way to reduce bullying, harassment and humiliation. Bullying can also be prevented through legislation, including the proposed [Tyler Clementi Higher Education Anti-Harassment Act](#) that will grant protections from online and offline bullying for college students, as well as the [Safe Schools Improvement Act](#) that promises to do the same at the K-12 level.

MORE IN-DEPTH BULLYING FACTS AND RESEARCH

REFERENCES

1. National Center for Education Statistics and Bureau of Justice Statistics, School Crime Supplement, 2017.
2. Bradshaw, C.P., Sawyer, A.L., & O'Brennan, L.M. (2007). Bullying and peer victimization at school: Perceptual differences between students and school staff. *School Psychology Review*, 36(3), 361-382.
3. Centers for Disease Control and Prevention, Youth Risk Behavior Surveillance System, 2013
4. Hawkins, D. L., Pepler, D., and Craig, W. M. (2001). Peer interventions in playground bullying. *Social Development*, 10, 512-527.
5. Kosciw, J. G., Greytak, E. A., Bartkiewicz, M. J., Boesen, M. J., & Palmer, N. A. (2012). The 2011 National School Climate Survey: The

experiences of lesbian, gay, bisexual and transgender youth in our nation's schools. New York: GLSEN.

6. StopBullying.Gov

SOURCES

1. <https://d3n8a8pro7vhmx.cloudfront.net/themes/51172dcc1ad07a63d6000002/attachments/original/1361410358/BullyingToday.pdf?1361410358>
2. http://ojp.gov/newsroom/factsheets/ojpdfs_bullying.html
3. <https://www.psychologytoday.com/basics/bullying>
4. <http://www.pacer.org/bullying/about/media-kit/stats.asp>
5. <http://www.stopbullying.gov/news/media/facts/#listing>
6. <http://www.stopbullying.gov/what-is-bullying/definition/index.html#types>

TAKE ACTION

JOIN THE MILLION UPSTANDER MOVEMENT

Help us reach our goal of recruiting 1 million Upstanders.

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HOW DOES KINDNESS AND RESPECT IMPACT YOU?

In your words, your experience.

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THE WORD**

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The Tyler Clementi Foundation

104 West 29th St., 11th Floor, NYC, NY 10001 • (646) 598-8204

The Tyler Clementi Foundation is a 501(c)(3) non-profit organization working to end online and offline bullying, harassment and humiliation.

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QUALIFICATIONS PROFILE

- Appointments with over 20+ Insurance Companies
- High Performing Talent Acquisition
- Training Development
- Change Management & Reengineering
- Succession Planning & Development
- Performance Compensation Programs
- Merger & Acquisition Restructuring
- Employee Relations, Diversity and Inclusion

EXPERIENCE PROFILE

THE NEAT COMPANY

HUMAN RESOURCES CONSULTANT

07/2015-Present

- Execute human resource related projects for non-profits, small businesses and individual clients
- General Lines Insurance Licensed Agent (Life, Accident, and Health) (2017)

THE NEAT CREW

The Neat Crew is a commercial and residential cleaning company serving the Dallas and Fort Worth metro areas.

OWNER AND OPERATOR

08/2017-Present

UNITED WAY OF TARRANT COUNTY

United Way of Tarrant County is a national system of volunteers, contributors, and local charities helping people in their own communities. As the Director, Human Resources, I guided and managed the overall provision of Human Resources services, policies, and programs for the entire organization.

VICE PRESIDENT, HUMAN RESOURCES

10/2013-03/2017

- Management of staff (3) direct reports and over 90+ staff in departments throughout (3) offices within Tarrant County in Fort Worth, Arlington and Bedford
- Planned, developed, directed and evaluated the organization's human resource function and performance annually
- Enhanced, developed, implemented and enforced human resources policies and procedures of the organization
- Full oversight and development of on-boarding, off-boarding, recruitment and development of talent
- Participated in the development of the plans and programs as a strategic partner in perspective of the impact on people
- Developed progressive and proactive compensation and benefits programs to provide motivation, incentives and rewards for effective performance
- Enhanced, developed, implemented and enforced human resources policies and procedures of the organization by way of systems that will improve the overall operation and effectiveness of the corporation
- Continually assessed the competitiveness of all programs and practices against the relevant comparable organizations, industries and markets
- Evaluated and advised on the impact of long-range planning of new programs/strategies and regulatory action as those items impact the attraction, motivation, development and retention of the people resources within the agency
- Developed human resource planning models to identify competency, knowledge and talent gaps and develop specific programs for the filling of the gaps
- Managed the budget and other financial measures of the Human Resources Department
- Managed other areas such as employee communication, community relations and administration
- Active staff member of the Compensation and Benefits, Governance, Internal Campaign, Diversity and Employee Engagement Committees

CAREER HIGHLIGHTS

- Within the first (3) weeks of employment, conducted an audit that uncovered immediate risks to the organization;
- Developed a performance management system that linked performance to compensation;
- Redesigned benefit plans and implemented policies to attract and retain staff; decreased turnover rates annually;
- Reviewed, evaluated and implemented a new HRIS system (ADP to Paycom): Payroll, Time Management, Talent Acquisition, and Human Resources & Benefits;

FOREX CAPITAL MARKETS, INC.

FXCM Inc. (NYSE: FXCM) is a Fortune 500 international company and global online provider of foreign exchange trading and related services.

HUMAN RESOURCES MANAGER

05/2008-08/2012

HUMAN RESOURCES GENERALIST

05/2005-05/2008

- Management of (8) staff members in various departments, administration, benefits administration, training and development, recruitment, employee relations and over (300)+ indirect staff members
- Full cycle recruitment, developing job requisitions, advertising, interviewing and selection of employees, offers, on-boarding process, metrics and benchmarks for positions in Operations, Sales, Administration, Human Resources, Compliance, Information Technology, Dealing, Business Development and Marketing

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- > Workforce Planning, worked with management to develop strategies to filling vacancies within their departments and developing candidate bases
- > Employee relations, management coaching, conducted trainings to enhance skills, employee satisfaction surveys, internal investigations, terminations, grievances, performance reviews, job evaluations, exit interviews, unemployment process/hearings, immigration compliance
- > Benefits administration, enrolled employees in benefit plans, corporate programs, negotiated contracts, assured compliance with laws
- > HRIS Systems, 7+ years utilizing ADP HRIS systems, time and attendance, benefits administration, salary analysis, reporting functions
- > Performance/Talent Management, working with management to utilize talent within the organization, managing out under-performers and creating reward systems to acknowledge high performers
- > Policy and procedure design, employee handbook design, policy interpretation
- > Training and Development, staff and management level trainings on various topics

CAREER HIGHLIGHTS

- > Began with (5) total employees and (2) departments in the Plano, TX office in 2005 and hired over 300+ staff members and managers, while expanding to a total of (10)+ departments over a (3-5) year period of time;
- > HR Project lead for the acquisition of ODL in London and hired a new business manager within 3 business days of working in the office;
- > Created a first time management training series program that successfully integrated new managers into the workforce;
- > Project lead for the applicant tracking system (Virtual Edge) integration and initiated the development of a company career site;

EDUCATION & CERTIFICATION CREDENTIALS

GENERAL LINES AGENT- LIFE, ACCIDENT, AND HEALTH (2017-PRESENT)

SHRM-CP CERTIFICATION (2013-PRESENT) Society of Human Resources Management

PROFESSIONAL IN HUMAN RESOURCES CERTIFICATION (2007-PRESENT) Human Resources Certification Institute

National Notary Association (Notary Public 2007-Present)

MASTER OF BUSINESS ADMINISTRATION IN GENERAL BUSINESS (2005) University of Phoenix

BACHELOR OF ARTS IN ORGANIZATIONAL AND CORPORATE COMMUNICATIONS (2003) University of Houston

LEADERSHIP DEVELOPMENT

- Talent Advisory Committee (TAC- United Way World Wide) 2016-2017
- Emotional Intelligence- The Foundation of Effective Communication (2016)
- United Way Worldwide Talent Management & Finance Conference (2013-2016)
 - Strategic Workforce Planning Certification (2012)
 - Human Capital Strategist Certification (2011)
 - Internal Investigation Certificate (2011)
 - 7 Habits of Highly Effective People (2010)
 - Training the Trainer Certification (2009)
 - Successfully Managing People (2008)
 - Leading with Emotional Intelligence (2007)
- SHRM Essentials of Human Resource Management (2006)
- Recruiting, Interviewing, and Selecting Employees (2006)

PROFESSIONAL ASSOCIATIONS

- Fort Worth Human Resources Association (FWHRA)
- Society of Human Resources Management
- Mid-Cities Human Resources Association

VOLUNTARY COMMITTEES

- Business Advisory Committee (TCC NW Campus) 2016-2017
- Site Based Decision Making Team (MG Ellis Primary School) 2013-2017
- Career Advisory Team (WBC) 2009-2012